



MISSOURI DEPARTMENT OF MENTAL HEALTH

KEITH SCHAFER, DEPARTMENT DIRECTOR



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
6.142

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| CHAPTER Human Resources | SUBCHAPTER Personnel Administration | EFFECTIVE DATE 6/22/15 | NUMBER OF PAGES 8 | PAGE NUMBER Page 1 of 8 |
| SUBJECT Family Medical Leave | | AUTHORITY Section 630.050, RSMo | HISTORY See Below | |
| PERSON RESPONSIBLE Deputy Director, Administration | | | SUNSET DATE 7/1/18 | |

PURPOSE: To define the Department's policy with regard to family and medical leave.

APPLICATION: Applies to the entire department.

(1) The Family and Medical Leave Act (FMLA) of 1993, as amended in 2009, makes available two types of leave to eligible employees: the General Provisions (General FMLA Leave) and Military Family Medical Leave Provisions (Military FMLA Leave). The FMLA applies to all public agencies, including state government agencies, regardless of the number of employees it employs. Special hours of service eligibility requirements apply to airline flight crew employees. This DOR addresses the General FMLA Leave Provisions. Military FMLA Leave Provisions are addressed in a separate DOR 6.143. General FMLA Leave grants eligible employees up to twelve (12) weeks of job protected leave per year because of the birth and/or care of the newborn child of the employee, because of the placement of a child with the employee for adoption or foster care, because the employee is needed to care for a family member (spouse, parent, or child) with a serious health condition, or because the employee's own serious health condition which makes the employee unable to perform the functions of his or her job.

(2) **DEFINITIONS** -- As used in this DOR, the following terms shall mean:

(A) "Eligible employee," an employee who has been employed by the same employer for at least one (1) year, and has at least 1,250 actual hours worked during the preceding twelve (12) month period. (The state of Missouri is considered to be one employer.) Military leave shall count as hours worked;

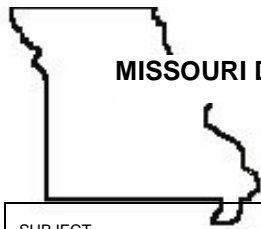
(B) "Spouse," a husband or wife recognized under the law of the place where the marriage was entered into;

(C) "Parent," a biological parent or an individual who stood *in loco parentis* to an employee when the employee was a child as defined below. This term does not include parents-in-law;

(D) "Child," a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person who is standing *in loco parentis*, who is either under age eighteen (18), or eighteen (18) or older and incapable of self-care because of a mental or physical disability;

(E) "*In loco parentis*," persons who stand *in loco parentis* include those with day-to-day responsibilities to care for and financially support a child;

(F) "Serious health condition," an illness, injury, impairment, or physical or mental condition that involves one of the following:



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1. inpatient care and any period of incapacity or treatment in connection with or consequent to inpatient care;

2. any period of incapacity requiring absence from work for more than three (3) consecutive and full calendar days AND that involves continuing treatment by a health care provider and any period of incapacity involving either:

- Treatment two (2) or more times by, or under the supervision of, a health care provider (i.e. in person visits). The first visit occurring within seven (7) days of the first day of incapacity and both the first and second visits occurring within thirty (30) days of the first day of incapacity.
- One treatment by a health care provider (i.e. an in-person visit within seven (7) days of the first day of incapacity) with a continuing regimen of treatment (e.g. prescription medication; physical therapy, etc;

3. any period of incapacity or continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider and may involve occasional episodes of incapacity;

4. any period of incapacity related to pregnancy or for prenatal care by a health care provider;

5. a period of incapacity that is permanent or long-term due to a condition for which treatment may or may not be effective;

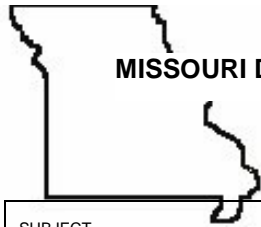
6. Absences to receive multiple treatments (including any period of recovery) for: (a) restorative surgery for a condition that would likely result in a period of incapacity of more than three (3) consecutive and full calendar days if not treated; (b) condition that would likely result in a period of incapacity of more than three(3) consecutive and full calendar days in the absence of medical intervention for treatment (e.g. cancer, severe arthritis, or kidney disease)

(G) "Week," for a full-time employee, a week is considered to be forty (40) hours. For employees who regularly work overtime, all hours worked in the past year will be taken into account and may expand the week beyond forty (40) hours. This is calculated on a case-by-case basis. For a part-time employee, a week is considered to be the amount of hours normally worked during a week (e.g.: 32 hours is considered a week for an 80% employee). The twelve (12) week period can be figured in hours for the purposes of intermittent leave (see below); and

(H) "Year," for the General Provisions of FMLA, the Department defines a year as the current month and preceding eleven (11) months.

(3) USE OF LEAVE DURING FAMILY AND MEDICAL LEAVE

(A) During a period of family and medical leave, the employee will use accumulated sick, annual, state and federal compensatory time and holiday leave in accordance with facility policy until the leave balance is exhausted; except in the case of workers compensation which may be taken as leave without pay and still covered under the FMLA and except in the case of maternity or paternity



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leave which will be set out in (B) and (C). After those leave balances are exhausted, the employee will be placed on leave without pay.

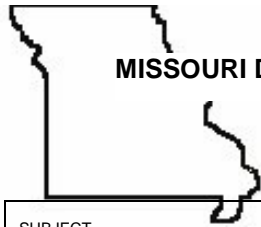
(B) Depending upon accumulated sick leave balances, up to six (6) weeks of sick leave shall be granted to a mother immediately after the birth of a child. If there is a medical need for the mother to be absent for a longer period it shall be documented by appropriate medical statements. If the mother desires more than six (6) weeks absence and there is no documented medical reason, the balance of the twelve (12) weeks allowed will be charged against annual, state and federal compensatory time or holiday leave, and leave without pay after those leave balances are exhausted. Leave for birth and care of child must conclude within twelve (12) months of the birth. Use of intermittent leave is subject to the employer's approval.

(C) Depending upon accumulated sick leave balances, up to one (1) continuous week of sick leave shall be granted to a father immediately after the birth of a child. If there is a medical need to care for the mother or child for a longer period of time it shall be documented by appropriate medical statements. If the father desires more than a one (1) week absence and there is no documented medical reason, the balance of the leave will be charged against annual, state and federal compensatory time or holiday leave, and leave without pay after these balances are exhausted. Use of intermittent leave is subject to the employer's approval.

(D) In the case of adoption or foster care (as defined in section 825.112 of the FMLA Final Rules and Regulations) up to six (6) weeks of sick leave (depending on sick leave balances) shall be granted to an adoptive or foster parent for bonding purposes if certified by the facilitating adoption or foster care agency or professional that bonding time is required and that the employee requesting the leave is the primary caregiver of the child. An additional six (6) weeks of annual, state and federal compensatory time, holiday or unpaid leave for bonding time shall be granted to the adoptive or foster parent upon request. Annual, state and federal compensatory time and holiday leave must be exhausted prior to the use of leave without pay. Use of sick leave in these situations must commence immediately upon placement of the child for adoption or foster care. FMLA leave will also be granted prior to the actual placement or adoption of a child if an absence from work is required in order for the placement for adoption or foster care to proceed.

(E) In the event that both the husband and wife are employees of the State of Missouri, leave for the birth, adoption, or foster care placement of a child shall be limited to a period of twelve (12) weeks between the two employees.

(F) In the event that both the husband and wife are employees of the State of Missouri, sick leave for the birth, adoption, or foster care placement of a child shall not exceed six (6) weeks between the two employees.



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(4) NOTICE REQUIREMENTS

(A) Notice of Employee Eligibility for FMLA

The facility notifies an employee of whether or not the employee is eligible for FMLA within (5) business days of an employee's request for FMLA or within five (5) business days of the facility's awareness that the employee's leave may qualify for FMLA. This notice is given to the employee at the beginning of the first FMLA qualifying event leave of the year.

1. If the employee has a subsequent need for FMLA leave during that same year, the facility will not provide any other notice of eligibility unless the employee's eligibility status has changed;

2. If the employee's eligibility status has changed the facility will notify the employee of the change within five (5) business days.

(B) Designation Notice

The employee will receive a Designation Notice within five (5) business days after the facility has enough information to determine whether or not the condition is FMLA qualified.

(C) Employee Notice of Need to use FMLA Leave

1. **Forseeable Leave.** An employee is required to give thirty (30) days notice in the event of a foreseeable leave. When a thirty day notice is not possible, the employee shall give notice as soon as practicable and within two (2) business days of learning of the need for leave. When a notice of less than thirty (30) days is given by the employee, the facility may require an explanation of why the thirty (30) day notice was not given. If timely notice is not given the period of delay counts as non-FMLA absence.

2. **Unforeseeable Leave.** In unexpected or unforeseeable situations, an employee should provide as much notice as practicable, usually verbal notice within one (1) or two (2) business days of when the need for leave becomes known, followed by a written documentation as required by the facility. If timely notice is not given, the period of delay counts as non-FMLA absence.

(5) APPLYING FOR AND SCHEDULING LEAVE

(A) In all circumstances, the employee must follow local facility policies and procedures for notifying supervisory staff of expected or unexpected absences.

(B) An employee requesting family and medical leave must complete the appropriate facility FMLA documents and return them to the appropriate person designated by the facility. The documents must state the reason for the leave, the duration of the leave, and the starting and ending dates of the leave.

(C) An employee may take family and medical leave when medically necessary in separate blocks of time due to a single illness or injury. An employee may also work a reduced schedule (e.g., from full-time to part-time) when the employee and the facility agree to such an arrangement. Intermittent leave or leave taken due to a reduced schedule will only reduce the total amount of family



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and medical leave by that amount actually taken. At the facility's discretion, in cases of foreseen leave with a planned medical treatment, an employee may be required to transfer to another position to better accommodate an intermittent leave schedule.

(6) MEDICAL CERTIFICATIONS AND MEDICAL RECERTIFICATIONS

(A) An application for leave based on the serious health condition of the employee or the spouse, child, or parent must be supported by a Medical Certification completed by the health care provider. The facility provides the relevant Medical Certification to the employee: (1) within five (5) business days after the need is requested in cases of foreseeable leave (2) within five (5) business days after the leave commences in cases of unforeseeable leave; or (3) at a later date if the facility has reason to question the appropriateness or duration of the leave. The completed Medical Certification must be provided by the employee on the appropriate form provided by the facility within fifteen (15) calendar days after requested, regardless of whether the leave is foreseeable or unforeseeable. If the Medical Certification is not returned within the fifteen (15) calendar day period and the employee has not provided information about his or her efforts to obtain a Medical Certification by the end of the same fifteen (15) calendar day period, FMLA leave can be denied.

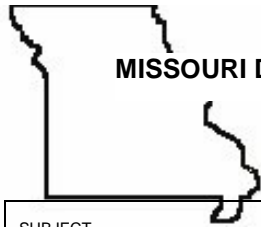
(B) If the medical certification is returned but is incomplete or insufficient, the employee will be provided a written notice by the facility detailing the specific information that is still needed. The employee will be given seven (7) calendar days to provide the facility with the required information to make the Medical Certification complete and sufficient. If the Medical Certification is returned timely but does not resolve the incomplete or insufficient information, FMLA leave may be denied.

(C) Medical Recertifications may be required for leave taken because of an employee's own serious health condition or the serious health condition of a family member. The facility can request a Medical Recertification in the following situations:

1. Upon expiration of the period of incapacity set out in the Certification; or
2. every six (6) months for intermittent FMLA leave, and then only in conjunction with an absence; or
3. every thirty (30) days for non-intermittent FMLA leave and then only in conjunction with an absence.

In addition, a Medical Recertification can be requested at any time that:

1. An extension of FMLA leave time is needed; or
2. there is a significant change in the Medical Certification terms; or
3. the facility receives information casting doubt about the employee's stated reason for absence.



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(D) Once a Medical Certification or Recertification is complete and sufficient, the facility, Human Resource Office or Leave Administrator (but not the employee's immediate supervisor) may contact the employee's health care provider directly to authenticate and clarify the content of the Medical Certification or Recertification. An employee signed HIPAA Consent Form is not required for authentication (to verify that the health care provider completed the Medical Certification or Recertification). A HIPAA Consent Form signed by the employee may be required by the employee's health care provider for clarification (questions about the meaning of a response on the Medical Certification or Recertification; or questions to understand the handwriting of the health care provider). The facility will not require an employee to sign a HIPAA Consent Form, but if the employee refuses to do so and there remains a question of authentication or clarification, FMLA may be denied until the questions are resolved.

(E) The facility may require a second opinion of a Medical Certification by the health care provider. If the second opinion conflicts with the first, the facility may require a third opinion. The provider of the third opinion must be jointly designated or approved by both the facility and the employee. The third opinion will be final. The second and third opinions will be paid for by the facility.

(F) The facility will not require a second or third opinion on a Medical Recertification.

(7) BENEFITS COVERAGE DURING LEAVE

(A) During a period of family and medical leave, the employee will be retained in the Missouri Consolidated Health Care Plan under the same conditions that applied before leave commenced. If the employee enters into a leave of absence without pay, the employee must continue to make any contributions that he or she made to the plan before taking leave to continue health coverage (e.g.: health insurance for family).

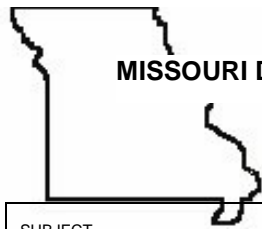
Employee contribution amounts are subject to any change in rates that occur while the employee is on leave. Failure of the employee to pay his or her share of the health insurance premium will result in a loss of coverage.

(B) The employee is not entitled to benefit accrual during periods of unpaid leave but will not lose anything accrued prior to leave.

(8) RETURN FROM LEAVE

(A) Before the employee returns to work from family and medical leave for their own serious health condition, the facility will require the employee to submit a medical certification from a health care provider that releases the employee to return to work.

(B) An accommodation may be requested should the employee be released to work with restrictions or their medical condition impairs the employee's ability to perform the duties of their position. Employees seeking an accommodation



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are to contact their Human Resources office for specific information regarding the review process and to obtain a Reasonable Accommodation Request Form. Determinations are based upon the medical documentation provided and the ability to permit the accommodation without creating an undue hardship. Additional resources regarding potential accommodations can be explored through the State of Missouri's long term disability insurer.

(C) Employees returning from family and medical leave will be returned to the same or equivalent position. An equivalent position is defined as the same job title with the same pay, the same or similar work duties, the same work location, and the same shift and days off.

(D) In the event of any activity affecting all employees or employees in the same class as the employee on family and medical leave (such as cost of living increase or layoff), the employee will return to work with such benefits or in a position consistent with the result as if the employee had been on duty at that time.

(9) FAILURE TO RETURN FROM LEAVE

(A) If the employee is unable to return from family and medical leave the employee may request further use of sick or other paid leave or a leave of absence without pay. Such leave requests must be made prior to the expiration of the employee's approved family and medical leave, and in accordance with facility policy. The appointing authority will determine if further leave beyond the twelve (12) weeks family and medical leave will be granted. The failure of an employee to return to work upon the expiration of family and medical leave without authorization as described above will be considered unauthorized absence and may result in disciplinary action up to and including dismissal.

(B) If the employee fails to return to work after the expiration of the leave, the employee will be required to reimburse the state for payment of health insurance premiums during any unpaid family and medical leave, unless the reason the employee fails to return is:

1. the presence of a serious health condition which prevents the employee from performing his or her job, or
2. due to circumstances beyond the employee's control. Certification is required within thirty (30) days of failure to return for either reason listed above.

(10) Failure to comply or assure compliance with the provisions of the Department Operating Regulation may be cause for disciplinary action up to and including dismissal.

History: Original DOR effective April 1, 1998. Amendment effective July 1, 2002. Amendment effective May 1, 2003. Amendment effective April 17, 2006. Amendment effective July 1, 2009. On June 12, 2012, the sunset date was extended to July 1, 2015. Amendment effective June 22, 2015.